IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Bail Appl..No. 3678 of 2007()

CRIME NO. 40/1995 OF KOLATHUR POLICE STATION
AGAINST THE ORDER IN LP.78/2005 IN
CC.200/2001 of J.M.F.C.-I, PERINTHALMANNA

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PETITIONER/ACCUSED

K.ISMAIL,
S/O KUNHAMMED, KOLLANCHERIVEEDU,
THRIKKALAM AMSOM, MUNNIYUR.

BY ADV. SMT.RINCI ANTONY.T
SMT.LEELA R.

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 3678 of 2007

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Dated this the 21st day of June, 2007

O R D E R

Application for anticipatory bail. Petitioner is the third accused. He faces allegations of having committed offence punishable , inter alia, under Section 324 I.P.C. All offences alleged are bailable offences. Consequent to non-appearance of the petitioner, he finds himself in the unenviable predicament of a warrant of arrest issued by the learned Magistrate chasing him. He is willing to surrender before the learned Magistrate. According to him, he is innocent. His absence was not willful. Directions under Section 438 Cr.P.C. may in these circumstances be issued to save the petitioner from the undeserved trauma of arrest and incarceration, it is prayed.

2. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section

438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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